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Joan M. Shaughnessy

*Washington and Lee University School of Law*, [shaughnessyj@wlu.edu](mailto:shaughnessyj@wlu.edu)

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# An Essay on Poverty and Child Neglect: New Interventions

Joan M. Shaughnessy\*

Millions of America's children are suffering in extreme poverty and hundreds of thousands, perhaps millions of those children are also the victims of child neglect.<sup>1</sup> The intertwined problems of child poverty and child neglect have been a concern of policy makers and scholars since the advent of the modern child welfare system.<sup>2</sup> Reliance on traditional child welfare services, particularly foster care, has proven to be an unsatisfactory solution to the problem of the neglect of poor children. Gradually, alternative approaches are being developed and tested, but it remains to be seen how successful those approaches will prove to be.

Child poverty in the United States is widespread and growing. According to the census bureau, in 2012, almost 22% of children under the age 18, and 24% of children under 6, were living in poverty. Of those children, 40% were living in extreme poverty.<sup>3</sup> The Department of

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1. See generally, Bruce Boyer & Amy Halbrook, *Advocating for Children in Care in a Climate of Economic Recession: The Relationship Between Poverty and Child Maltreatment*, 6 NW. J.L. & SOC. POL'Y 300 (2011).

2. For some of the extensive literature on poverty and child maltreatment, see DUNCAN LINDSEY, *THE WELFARE OF CHILDREN* (2d ed. 2004); see also MARGARET SMITH & ROWENA FONG, *THE CHILDREN OF NEGLECT: WHEN NO ONE CARES* (2013); *NEGLECTED CHILDREN: RESEARCH, PRACTICE, AND POLICY* (Howard Dubowitz ed. 1999); LEROY PELTON, *FOR REASONS OF POVERTY: A CRITICAL ANALYSIS OF THE PUBLIC CHILD WELFARE SYSTEM IN THE UNITED STATES* (1989); Wendy Bach, *The Hyperregulatory State: Women, Race, Poverty and Support*, 25 Yale J.L. & Feminism (forthcoming 2014); see also Janet Wallace & Lisa Pruitt, *Judging Parents, Judging Place: Poverty, Rurality, and Terminating Parental Rights*, 77 MO. L. REV. 95 (2012); Bruce Boyer & Amy Halbrook, *Advocating for Children in Care in a Climate of Economic Recession: The Relationship Between Poverty and Child Maltreatment*, 6 NW. J.L. & SOC. POL'Y 300 (2011); Deborah Paruch, *The Orphaning of Underprivileged Children: America's Failed Child Welfare Law & Policy*, 8 J. L. & FAM. STUD. 119 (2006); Sarah H. Ramsey, *Children in Poverty: Reconciling Children's Interests with Child Protective and Welfare Policies: A Response to Ward, Doran and Roberts*, 61 MD. L. REV. 437 (2002); Andrea Charlow, *Race, Poverty, and Neglect*, 28 WM. MITCHELL L. REV. 763 (2001); and Daan Braveman & Sarah Ramsey, *When Welfare Ends: Removing Children From the Home for Poverty Alone*, 70 TEMPLE L. REV. 447 (1997).

3. U.S. Census Bureau, Table 3. People in Poverty by Selected Characteristics: 2011

Agriculture reports that, in 2011, over 10% of children (in 3.9 million households) experienced food insecurity and over 1% of children experienced severe food insecurity.<sup>4</sup> It has been estimated that, over the course of a year, over 2.5 million children in the United States experience homelessness.<sup>5</sup>

The census measures, which define poverty based upon yearly household income, mask substantial differences in the experiences of poor children. Some children experience poverty for a limited time. For others, however, most or all of their childhood is spent in poverty.<sup>6</sup> Similarly, the communities in which poor children live vary. Many, but not all, poor children live in areas of concentrated poverty. A 2012 study estimated that one in three poor children lived in an area of concentrated poverty.<sup>7</sup> The same report noted that the percentage of children living in areas of concentrated poverty was increasing.<sup>8</sup> An additional factor is the timing of poverty in the lives of children. Some children experience poverty later in childhood, others are born and spend their early years in poor households.<sup>9</sup>

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and 2012 (2013) *available at* <http://www.census.gov/hhes/www/poverty/data/inctpovhlth/2012/table3.pdf>; *see also* U.S. Census Bureau, Table 5. People with Income Below Specified Ratios of their Poverty Thresholds by Selected Characteristics: 2012 (2013) *available at* <http://www.census.gov/hhes/www/poverty/data/inctpovhlth/2012/table5.pdf>.

4. ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC. HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2011, ECON. RESEARCH REPORT NUMBER 141, at 7 (2012) *available at* <http://www.ers.usda.gov/media/884525/err141.pdf> (defining very low food security as children who are, "food insecure to the extent that eating patterns of one or more household members were disrupted and their food intake reduced, at least some time during the year, because they could not afford enough food"); *see also* CRAIG GUNDERSEN & JAMES P. ZILIAK, CHILDHOOD FOOD INSECURITY IN THE U.S.: TRENDS, CAUSES AND POLICY OPTIONS (2014), *available at* <http://futureofchildren.org/futureofchildren/publications/docs/Research-Report-Fall2014.pdf>.

5. ELLEN BASSUK ET AL., THE NAT'L CTR. ON FAMILY HOMELESSNESS, AMERICA'S YOUNGEST OUTCASTS: A REPORT CARD ON CHILD HOMELESSNESS 15 (2014), *available at* <http://www.homelesschildrenamerica.org/mediadocs/280.pdf>.

6. Robert Lee Wagmiller & Robert M. Adelman, *Childhood and Intergenerational Poverty: The Long Term Consequences of Growing up Poor* 3, NAT'L CTR. FOR CHILDREN IN POVERTY (2009), *available at* [http://www.nccp.org/publications/pub\\_909.html](http://www.nccp.org/publications/pub_909.html) (finding that 6.4 percent of children are poor for three-quarters or more of childhood).

7. ANNIE E. CASEY FOUNDATION, KIDS COUNT: DATA SNAPSHOT ON HIGH-POVERTY COMMUNITIES 1 (2012) *available at* <http://www.aecf.org/m/resourcedoc/AECF-Children-LivingInHighPovertyCommunities-2012-Full.pdf>.

8. *Id.*

9. *See* CAROLINE RADCLIFFE & SIGNE-MARY MCKERNAN, URBAN INSTITUTE, CHILD POVERTY AND ITS LASTING CONSEQUENCE 1 (2012), *available at* <http://www.urban.org/UploadedPDF/412659-Child-Poverty-and-Its-Lasting-Consequence-Paper.pdf> (noting that poverty experienced in early childhood has a greater impact on academic achievement than when a child experiences poverty in adolescence).

Poverty, particularly chronic, concentrated poverty and poverty in early childhood, places children at risk for a host of physical, mental and emotional problems.<sup>10</sup> Poor children are exposed to more toxins inside and outside their homes than other children, putting them at risk for a range of illnesses and emotional and cognitive difficulties.<sup>11</sup> The homes and neighborhoods of poor children also put them at greater risk of injury, both intentional and accidental.<sup>12</sup> Each of these risk factors can harm children but research has shown that long-term exposure to the cumulative risks associated with poverty is particularly damaging, especially when exposure begins early in life.<sup>13</sup>

Numerous studies have found that poor children suffer greater developmental problems, greater mental health and behavioral problems, and worse educational outcomes than other children.<sup>14</sup> As a result of these long-term deficits, children raised in poverty are much more likely to be poor as adults than are other children.<sup>15</sup>

The serious detriments suffered by many poor children raises the question of whether those children are victims of neglect. Under some definitions of neglect, it would be easy to conclude that they are. For example, neglect has sometimes been defined as “the concept that one or more of the child’s basic needs (e.g., food, shelter, and clothing; safety; love, and affection; health care; education; and/or socialization) are not

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10. See Gary W. Evans, *The Environment of Childhood Poverty*, 59 AM. PSYCHOLOGIST 77, 86 (2004); see also Greg J. Duncan & Katherine Magnuson, *The Long Reach of Childhood Poverty*, 2011 PATHWAYS 22, 23 (2011) available at [http://www.stanford.edu/roup/scspi/\\_media/pdf/pathways/winter\\_2011/PathwaysWinter11\\_Duncan.pdf](http://www.stanford.edu/roup/scspi/_media/pdf/pathways/winter_2011/PathwaysWinter11_Duncan.pdf) (“Emerging research in neuroscience and developmental psychology suggests that poverty early in a child’s life may be particularly harmful because the astonishingly rapid development of young children’s brains leaves them sensitive (and vulnerable) to environmental conditions.”).

11. See Evans, *supra* note 10, at 86 (summarizing studies finding increased exposure to lead, industrial pollutants, allergens, unclean water and noise).

12. See *id.* at 84–86 (summarizing studies finding greater risk of pedestrian accidents, greater household hazards, and greater exposure to violent crime).

13. See *id.* at 88; see also Robert Wagmiller, Jr. & Robert Adelman, *Childhood and Intergenerational Poverty: The Long-Term Consequences of Growing Up Poor*, National Center for Children in Poverty (2009) available at [http://www.nccp.org/publications/pub\\_909.html](http://www.nccp.org/publications/pub_909.html).

14. See Judith Samuels et al., *Homeless Children: Update on Research, Policy, Programs, and Opportunities* 10–14, OFFICE OF THE ASSISTANT SEC’Y FOR PLANNING & EVALUATION, U. S. DEP’T OF HEALTH & HUMAN SERVS. (2010) (summarizing studies).

15. See Wagmiller & Adelman, *supra* note 6; see also Duncan & Magnuson, *supra* note 10.

being met and as a result the child suffers harm or is at risk of harm.”<sup>16</sup> Many children in poverty do not have their basic needs met and as a result are suffering harm and are at risk of harm.<sup>17</sup>

Under the “effect on the child” definition of neglect, the correlation of poor and neglected children will inevitably be very high. A recent government report found that poor children are seven times more likely to be neglected than other children.<sup>18</sup> Not all children in low-income families are neglected under this definition. Some families, especially those who experience relatively limited periods of low income, are able to meet their children’s needs and protect them from harm or risk of harm.<sup>19</sup> But for many other poor families, especially those living in communities of protracted, severe poverty, it is nearly impossible to avoid harm to children whose basic needs cannot be met.<sup>20</sup> The environments are a source of harm and families lack the resources to leave them.<sup>21</sup>

Unsurprisingly, given the substantial overlap between poverty and some definitions of child neglect, studies have found that neglected children suffer harms that are similar to those found among poor children.<sup>22</sup> The nature and severity of the harm caused by neglect depend upon a number of

16. See MARGARET SMITH & ROWENA FONG, *THE CHILDREN OF NEGLECT: WHEN NO ONE CARES* 11 (2004).

17. See LINDSEY, *supra* note 2, at 189.

18. See ANDREA J. SEDLAK, ET AL., *FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4): REPORT TO CONGRESS (NIS-4)* at 5-12 & 5-16, U. S. Dep’t of Health & Human Servs. (2010), available at [http://www.acf.hhs.gov/sites/default/files/opre/nis4\\_report\\_congress\\_full\\_pdf\\_jan2010.pdf](http://www.acf.hhs.gov/sites/default/files/opre/nis4_report_congress_full_pdf_jan2010.pdf).

19. See SMITH & FONG, *supra* note 16, at 240.

20. Neglect is even more likely in poor families where parents also suffer from mental illness or substance abuse. See SMITH & FONG, *supra* note 16, at 211–28; Caren Kaplan et al., *Introduction: Shining Light on Chronic Neglect*, 24 *PROTECTING CHILDREN* 2, 3 (2009), available at <http://www.americanhumane.org/assets/pdfs/children/pc-pc-shining-lightpdf.pdf>; see also Mark Testa & Brenda Smith, *Prevention and Drug Treatment*, 19 *The Future of Children* 147, 147 (2009), available at [http://futureofchildren.org/futureofchildren/publications/journals/journal\\_details/index.xml?journalid=71](http://futureofchildren.org/futureofchildren/publications/journals/journal_details/index.xml?journalid=71) (“Research on whether prevention programs reduce drug abuse or help parents control substance use and improve their parenting has had mixed results at best.”). For a summary of some encouraging work on treatment of maternal depression as a way to avoid child maltreatment, see CHRISTOPHER LOWENSTEIN ET AL., *URBAN INST. LINKING DEPRESSED MOTHERS TO EFFECTIVE SERVICES AND SUPPORTS* (2013), <http://www.urban.org/UploadedPDF/412933-linking-depressed-mothers.pdf>.

21. See Evans, *supra* note 10, at 26; see also Fred Wulczyn, *Epidemiological Perspectives on Maltreatment Prevention*, 19 *THE FUTURE OF CHILDREN* 39, 54–55 (2009), available at [http://futureofchildren.org/futureofchildren/publications/journals/journal\\_details/index.xml?journalid=71](http://futureofchildren.org/futureofchildren/publications/journals/journal_details/index.xml?journalid=71).

22. SMITH & FONG, *supra* note 16, at 238–39.

factors. Those factors include the duration and severity of the neglect, the age of the child, the resilience of the child, the availability of other caring adults in the family's life, among other things. Neglected children can suffer from a range short and long term problems, among them developmental delays, emotional and psychological harms, cognitive and educational deficiencies and chronic physical ailments. The most severe cases of neglect may end in death.<sup>23</sup>

Given the serious effects of poverty and neglect on children, it is important to ask where the responsibility for prevention lies and how that responsibility should best be exercised.

One response is to ascribe responsibility to society and look to public resources to meet the basic needs of all children. There is a long history of societal acceptance of responsibility for the care of poor children, albeit frequently grudging and mean-spirited.<sup>24</sup> That acceptance continues today. An array of programs have been made available by federal, state and local governments, as well as by the private, non-profit sector. Examples are many—the Earned Income Tax Credit, education spending, for both universal K to 12 education, as well as some pre-K programs, health insurance for children, a range of food programs, including food stamps and school breakfast and lunch programs, subsidized housing, along with many others. But, as so often has been the case in the past, available assistance falls far short of what is needed to relieve childhood poverty.<sup>25</sup> Indeed, in spite of the well-documented need, in many respects societal provision for poor children has become more grudging over time. Since the mid-1990s,

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23. CHILD WELFARE INFORMATION GATEWAY, ACTS OF OMISSION: AN OVERVIEW OF CHILD NEGLECT 4 (2012), *available at* <https://www.childwelfare.gov/pubs/focus/acts/acts.pdf> (stating that neglect is the cause of roughly two-thirds of all child maltreatment-related deaths).

24. See Sarah Ramsey & Daan Braveman, *'Let Them Starve': Government's Obligation to Children in Poverty*, 68 TEMP. L. REV. 1607, 1608–17 (1995). Ramsey and Braveman survey various arguments that might be made in favor of a legally enforceable governmental obligation to relieve childhood poverty. *Id.* at 1607. But they make clear that any obligation is by no means established in existing law. *Id.* at 1633. See also Alicia Ely Yamin, *Reflections on Defining, Understanding, and Measuring Poverty in Terms of Violations of Economic Social Rights-Under International Law*, 4 GEO. J. ON FIGHTING POVERTY 273 (1997) (arguing that international human rights law requires relief of poverty).

25. Studies of measures of poverty that take into account these government programs show that they have a measurable effect on poverty but still leave a substantial number of children poor and in need. KATHLEEN SHORT, U.S. CENSUS BUREAU, SUPPLEMENTAL POVERTY MEASURE 2011 FIGURE 1 (2012), [http://www.census.gov/hhes/povmeas/methodology/supplemental/research/Short\\_ResearchSPM2011.pdf](http://www.census.gov/hhes/povmeas/methodology/supplemental/research/Short_ResearchSPM2011.pdf).

when federal welfare reform was enacted, the number of poor families receiving federal welfare assistance (now known as TANF) has steadily declined.<sup>26</sup> This decline began in a time of relative economic prosperity, but caseloads continued to be very low during the severe economic downturn that began with the financial crisis of late 2007.<sup>27</sup> In spite of the evidence of significant food insecurity among poor children, Congress recently passed a substantial reduction in the federal food stamp program, SNAP.<sup>28</sup> As housing costs rise across the country, government housing assistance provides for a decreasing percentage of families in need.<sup>29</sup>

Responsibility for poor children might also be ascribed to their parents. It is a fundamental principle of our legal system that parents are responsible for the safety and well-being of their children.<sup>30</sup> Every state implements this principle through a variety of laws imposing criminal and civil liability on parents who fail to meet their responsibility to their children.<sup>31</sup> In every state, courts are empowered to authorize state child welfare authorities to remove children from the custody of neglectful parents and, in certain cases, to permanently terminate the parental rights of parents who have been found neglectful.<sup>32</sup>

State statutes vary in how they define neglect. Some definitions turn on the harm or risk of harm to the child. For example, Hawaii's definitional statute reads in part as follows:

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26. PAMELA LOPREST, URBAN INST., HOW HAS THE TANF CASELOAD CHANGED OVER TIME 2 (2012), [http://www.acf.hhs.gov/sites/default/files/opre/change\\_time\\_1.pdf](http://www.acf.hhs.gov/sites/default/files/opre/change_time_1.pdf).

27. *Id.*

28. *See generally* STACY DEAN & DOTTIE ROSENBAUM, CTR. ON BUDGET & POLICY PRIORITIES, SNAP BENEFITS WILL BE CUT FOR NEARLY ALL PARTICIPANTS IN NOVEMBER 2013 (2013), <http://www.cbpp.org/cms/?fa=view&id=3899> (reporting that almost every family participating the Supplemental Nutritional Assistance Program (SNAP) had their benefits cut in 2013).

29. JANET VIVEIROS & LISA STURTEVANT, CTR. FOR HOUSING POLICY, THE HOUSING AFFORDABILITY CHALLENGES OF AMERICA'S WORKING HOUSEHOLDS 5 (2014), <http://www.nhc.org/media/files/Landscape2014.pdf>.

30. *See Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (stating that parents have a right, "coupled with the high duty," to prepare their children for the future).

31. For a recent compilation of state laws defining child abuse and neglect, *see* CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., DEFINITIONS OF CHILD ABUSE AND NEGLECT (2011), *available at* [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/define.pdf](https://www.childwelfare.gov/systemwide/laws_policies/statutes/define.pdf).

32. For a recent compilation of state laws on the grounds for termination of parental rights, *see* CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., GROUNDS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS (2013), *available at* [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/groundtermin.pdf](https://www.childwelfare.gov/systemwide/laws_policies/statutes/groundtermin.pdf). *See e.g.*, VA. CODE ANN. § 16.1-283 (West 2012).

Child neglect . . . means the acts or omissions of any person responsible for the child's care that have resulted in the physical or psychological health or welfare of the child to be harmed or to be subject to any reasonably foreseeable, substantial risk or being harmed.<sup>33</sup>

More common are statutes that focus on parental responsibility. Minnesota, for example, defines neglect, in part, as:

Failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so.<sup>34</sup>

In spite of the difference in statutory language, most if not all courts who have confronted the issue have held that children cannot be separated from their parents solely because of poverty.<sup>35</sup> Often, the opinions offer little or no explanation for the holding. Occasionally, courts will point to statutory language as a basis for their conclusion. A smattering of cases have suggested that the poverty limitation has a federal constitutional basis, grounded in the Supreme Court's recognition of a parent's substantive due process right to the custody and control her children.<sup>36</sup>

As numerous scholars have observed, however, the limitation on removal because of poverty is frequently honored more in the breach than in the observance.<sup>37</sup> There are any number of cases upholding separations on the grounds that poverty alone was not the basis for the state's action, even though it was given substantial weight in the court's reasoning.<sup>38</sup> In some of these cases, it appears that courts are failing to acknowledge that the facts they rely upon to make a finding of parental unfitness are themselves likely manifestations of parental poverty. In *M.J.G.L. v. State Department of Human Resources*,<sup>39</sup> for example, the court relied heavily on

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33. Haw. Rev. Stat. § 350-1 (2013).

34. Minn. Stat. § 626.556(f)(1) (2014).

35. For an early case, see *Commonwealth v. Dee*, 222 Mass. 184 (1915). For a recent case, see *In re D.S.*, 88 A.3d 678 (D.C. 2014).

36. See, e.g., *In re D.S.*, 88 A.3d 678, 686.

37. See LINDSEY, *supra* note 2, at 169 (quoting LINDA GORDON, *HEROES OF THEIR OWN LIVES* (2002)). This is not a new phenomenon. Linda Gordon, studying the child welfare system in the 1880-1920 period, observed that “[p]overty was never alone. The characteristic signs of child neglect in this period . . . were often the results of poverty.”

38. See, e.g., *In re J.C.U.*, 670 N.W.2d 433 (Iowa App. 2003) (holding the court could terminate a mother's parental rights where the mother's residence and employment were unstable).

39. See *M.J.G.L. v. State Dept. Human Res.*, 587 So.2d 1004, 1006 (Ala. Civ. App. 1991).



the fact that the mother had lived in many different places and held many different jobs in upholding termination. Similarly, in *Recoda v. Department of Human Resources*,<sup>40</sup> the court upheld termination in a case in which the grounds included the failure of the mother to maintain steady employment and housing and her failure to visit her child with adequate frequency.<sup>41</sup> In the *Recoda* case, the evidence showed that the mother was without a means of transportation for at least part of the time her child was in foster care.<sup>42</sup>

The reaction of the courts in these cases is understandable. Frequently, by the time the parent's rights are terminated, the children have been in foster care for years and, frequently, with foster parents eager to adopt them and able to provide a safe and stable home. Their parents, by contrast, are struggling to survive. It is difficult to fault the courts for putting what they view as the best interests of the children first.

Nevertheless, child removal and termination of parental rights is seldom the answer to problem of poor, neglected children. The removal of children from their homes is itself traumatic, even for children placed in caring homes.<sup>43</sup> Some children are not as fortunate and are sent to placements where they suffer new trauma.<sup>44</sup> For the children who are removed and never receive a permanent placement, the consequences are particularly dire. Children who age out of foster care are more likely to be homeless, to be pregnant as teenagers, to be involved in the criminal justice system, to be unemployed and to be school drop-outs.<sup>45</sup> Only where it is clear that children cannot be cared for in their homes should such outcomes be risked.<sup>46</sup>

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40. See *Recoda v. Department of Human Res.*, 930 P.2d 1128, 1134(Nev. 1997).

41. *Id.* at 1133.

42. *Id.* at 1130.

43. Theo Liebman, *What's Missing From Foster Care Reform? The Need for Comprehensive, Realistic and Compassionate Removal Standards*, 28 *HAMLIN J. PUB. L. & POLICY* 141, 145 (2006) (explaining the state of foster care reform and suggesting certain reformations).

44. *Id.* at 148.

45. See Mark Courtney, Testimony to the House of Representatives Ways & Means Subcommittee on Income Security & Family Support, *Children Who Age Out of the Foster Care System 1-2* (July 12, 2007) (transcript available at [http://www.chapinhall.org/sites/default/files/old\\_reports/387.pdf](http://www.chapinhall.org/sites/default/files/old_reports/387.pdf)).

46. See Joseph Doyle, *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 *AM. ECON. REV.* 1583, 1584 (2007) (finding that children on the margin of placement tend to have better outcomes when they remain at home, particularly older children).

It is not at all clear that the child protective services system is limiting its removal powers to children at the greatest risk of severe harm in their own homes. The periodic studies of the National Incidence of Child Abuse and Neglect (NIS) have consistently shown that the children reported to child protective services on suspicion of child maltreatment are a very different population than the children determined to be maltreated in the NIS studies, even though those studies rely primarily on data from persons who are mandatory reporters.<sup>47</sup> Studies of physical and sexual abuse cases have revealed that severity of abuse or injury is not as predictive of removal as social class and race.<sup>48</sup> A series of studies using hypothetical cases have found that social workers and judges differ greatly in their judgment of whether a child should be removed from home.<sup>49</sup>

Moreover, the scale of the problem is too great to be managed through the foster care system. In 2012, 58,625 children were the subject of successful termination of parental rights proceedings and 52,039 were adopted out of foster care.<sup>50</sup> By contrast, 16,073,000 children were living in poverty and 7,143,000 children were living in extreme poverty.<sup>51</sup> Estimates of the number of children neglected in a year vary greatly, but are far greater than the foster care/adoption system is equipped to handle.<sup>52</sup>

Policymakers have begun to look for more innovative ways to respond to neglect among poor children. These approaches are based on several observations. First, scholars who have studied the child welfare system

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47. ANDREA J. SEDLAK ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4) 16–19 (2010), [http://www.acf.hhs.gov/sites/default/files/opre/nis4\\_report\\_exec\\_summ\\_pdf\\_jan2010.pdf](http://www.acf.hhs.gov/sites/default/files/opre/nis4_report_exec_summ_pdf_jan2010.pdf).

48. LINDSEY, *supra* note 2, at 146.

49. LINDSEY, *supra* note 2, at 163–67.

50. CHILDREN'S BUREAU, DEP'T OF HEALTH & HUMAN SERVS., THE ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM REPORT FOR 2012 (2013), <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport20.pdf>

51. CHILDREN'S DEFENSE FUND, THE STATE OF AMERICA'S CHILDREN 44 (2014), [http://www.childrensdefense.org/child-research-data-publications/data/2014-soac.pdf?utm\\_source=2014-SOAC-PDF&utm\\_medium=link&utm\\_campaign=2014-SOAC](http://www.childrensdefense.org/child-research-data-publications/data/2014-soac.pdf?utm_source=2014-SOAC-PDF&utm_medium=link&utm_campaign=2014-SOAC) (summarizing 2012 census data).

52. One government study, using data from state child protection databases, found 546,946 neglected children in 2012. *See* ADMIN. FOR CHILDREN AND FAMILIES, DEP'T OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT 21 (2012), <http://www.acf.hhs.gov/sites/default/files/cb/cm2012.pdf#page=31>. Another government report, using interviews directly with professionals in the field, found 771,700 neglected children under a stringent definition of neglect and 2,251,600 neglected children under a more inclusive definition, during the study year. *See* NIS-4, *supra* note 47, at 5–6, [http://www.acf.hhs.gov/sites/default/files/opre/nis4\\_report\\_exec\\_summ\\_pdf\\_jan2010.pdf](http://www.acf.hhs.gov/sites/default/files/opre/nis4_report_exec_summ_pdf_jan2010.pdf).

have observed that the dual role of child protective caseworkers, who attempt to serve both as investigators with the power remove children from their families and as supportive helpers connecting parents and children with resources and services, is ineffective.<sup>53</sup> Parents, especially parents in poor areas where child protective services are particularly active, deeply distrust the caseworkers.<sup>54</sup> In a climate of distrust, it is extremely difficult to help families alleviate poverty and avoid neglect. Second, observers have noted that many poor parents, particularly neglectful parents, suffer from social isolation.<sup>55</sup> They have relatively few adults in their lives who can help provide care and support for the family. The social isolation contributes to family stress and makes it more difficult for parents to respond to children's needs. It deprives families of useful information on everything from employment opportunities to community parenting norms.

Recent child welfare innovations respond to these observations by attempting to reduce parental mistrust of caseworkers and to reduce parental social isolation. Some of the new programs show promise, but it is still too soon to say whether they would be effective in reducing or ending child neglect if they were enacted universally.

One response to concerns about parental mistrust of caseworkers is what is called differential response.<sup>56</sup> Differential response refers to a process in which, rather than a traditional, adversarial investigation by child protective services leading to coercive interventions, some families are instead the subject of non-adversarial family assessments with a view

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53. PELTON, *supra* note 2 at 111–25.

54. See JUDITH LEVINE, AIN'T NO TRUST: HOW BOSSES, BOYFRIENDS, AND BUREAUCRATS FAIL LOW INCOME MOTHERS AND WHY IT MATTERS 47–83 (2013). Child protective services involvement in poor neighborhoods can be pervasive. Sabol and others, studying inner-city Cleveland, reported that nearly 50% of children in the study area would be investigated for child maltreatment before they were 10 years old. See W. SABOL ET AL., MEASURING CHILD MALTREATMENT RISK: A LIFE TABLE APPROACH, 28 ABUSE AND NEGLECT 967, 968 (2004).

55. See Claudia Coulton et al., *How Neighborhoods Influence Child Maltreatment: A Review of the Literature and Alternative Pathways*, 31 CHILD ABUSE & NEGLECT 1117, 1118 (2007) (reviewing 25 studies on the relationship between neighborhoods and child maltreatment).

56. For a comprehensive examination of differential response, see *The Special Issue of Protecting Children Entitled Exploring Differential Response: One Pathway Toward Reforming Child Welfare*, 23 PROTECTING CHILDREN 1 (2008) available at <http://www.americanhumane.org/assets/pdfs/children/differential-response/pc-23-1-2.pdf>; for a critical perspective on differential response programs, see Elizabeth Bartholet, *Differential Response: A Dangerous Experiment in Child Welfare*, 42 FLA. ST. U. L. REV. (forthcoming 2015), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2477089](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2477089).

toward voluntary, mutually agreed upon services.<sup>57</sup> Differential response programs vary from jurisdiction to jurisdiction and in many the lines between investigatory and assessment responses can be blurred.<sup>58</sup> Nevertheless, there is evidence that families are more receptive and less resistant to caseworkers in differential response jurisdictions,<sup>59</sup> and researchers have found some evidence that differential response programs do not have a detrimental effect on child safety compared to traditional investigation systems.<sup>60</sup>

Another change in child welfare that responds to concerns about trust and isolation is the introduction of family group conferencing in many jurisdictions.<sup>61</sup> Family group conferencing brings together a variety of family and community members, together with professionals, in an attempt to provide stronger supports for parents and children at risk of maltreatment. It seeks to identify potential sources of social support and to actively involve those supports with the family. It seeks to give both the parents and the family group an active role in making decisions about what is best for the child. There is evidence that family group conferencing enhances child safety and strengthens family and community support networks.<sup>62</sup>

Another type of program that attempts to reduce child neglect, particularly in poor communities, is a home visiting program.<sup>63</sup> These programs send nurses, paraprofessionals or volunteers into the homes of new mothers for the first months, or in some cases years, of a child's life. The visitor serves as an advisor, mentor and coach, lessening the new

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57. See Amy Rohm, *Differential Response: Progressive Child Welfare*, 23 PROTECTING CHILDREN 1, 3–7 (2008).

58. See Caren Kaplan & Lisa Merkel-Holguin, *Another Look at the National Study of Differential Response in Child Welfare*, 23 PROTECTING CHILDREN 5, 5–6 (2008).

59. *Id.* at 7.

60. See Mary Jo Ortiz et al., *Outcomes for Children with Allegations of Neglect who Receive Alternative Response and Traditional Investigations: Findings from NCANDS*, 23 PROTECTING CHILDREN 57, 68 (2008).

61. See Betty Christenson et al., *The Intersection between Differential Response and Family Involvement Approaches*, 23 PROTECTING CHILDREN 88, 92 (2008); C. Waites et al., *Increasing Cultural Responsiveness of Family Group Conferencing*, 49 SOC. WORK 291, 292 (2004).

62. Lisa Merkel-Holguin et al., *Learning with Families: A Synopsis of FGDM Research and Evaluations in Child Welfare*, 18 PROTECTING CHILDREN 2, 10 (2003), available at <http://www.americanhumane.org/assets/pdfs/children/fgdm/pc-pc-article-fgdm-research.pdf>.

63. Kimberly Howard & Jeanne Brooks-Gunn, *The Role of Home-Visiting Programs in Preventing Child Abuse and Neglect*, 19 THE FUTURE OF CHILDREN 119, 121 (2009).

mother's isolation and providing her with valuable information about parenting. A recent review of the literature found mounting evidence that home visitation improves parenting and children's cognitive development, but found mixed evidence of the effect of these programs on child neglect.<sup>64</sup>

More recently, attention has focused on research suggesting that, even in poor communities, neighborhoods with social integration and an ethos of neighborliness were less prone to child maltreatment than other neighborhoods.<sup>65</sup> Several pilot programs have been designed that attempt to use this research to reduce child maltreatment by mobilizing neighborhood resources. The programs vary, but they often include components that encourage greater ease of access to local services and that seek to build neighborhood social capital.<sup>66</sup> The programs are relatively new and different enough to make comparison difficult, but a recent review of the literature found that some community-focused programs, but not all of them, had resulted in significant reductions in child maltreatment.<sup>67</sup>

There is serious reason to doubt the child welfare system, as we know it today is designed to respond effectively to the needs of poor children at risk of neglect. Scholars, activists, foundations and government agencies have joined forces to develop better responses, directed at children, parents, families and communities. Many of these responses hold promise for improving the lives of poor, neglected children. It will take time to discover how well these programs work and to expand those that are effective to reach everyone who needs them.

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64. *Id.* at 138.

65. See Deborah Daro & Kenneth Dodge, *Creating Community Responsibility for Child Protection: Possibilities and Challenges*, 19 *THE FUTURE OF CHILDREN* 67, 67 (2009) ("The most sophisticated and widely used community prevention programs . . . emphasize . . . individual-family behavior and broader neighborhood, community, and cultural contexts."); see, e.g., Coulton, *supra* note 55.

66. Daro & Dodge, *supra* note 65, at 73.

67. *Id.* at 85–87.